



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2023-0512]

RIN 1625-AA00

Safety Zone, Neuse River, New Bern, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the Neuse River in New Bern, North Carolina. This action is necessary to provide for the safety of life on these waters during an aerobatic airshow on November 25, 2023. This rule prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port (COTP) North Carolina or a designated representative.

DATES: This rule is effective November 25, 2023 from 4 through 6 p.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0512 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief Petty Officer Elvin Rodriguez, Waterways Management Division, U.S. Coast Guard; telephone 910-772-2239, email NCMarineevents@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security

FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable to publish an NPRM and consider comments without delaying promulgation of the rule beyond November 25, 2023, the date of the air show, and it would be contrary to the public interest to delay promulgation of the rule until after the event occurs. The rule needs to be in effect by November 25, 2023, to protect persons and vessels from the hazards associated with this event. Such hazards include the possibility of an aircraft striking a vessel on the surface below the flight zone.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable to publish this rule 30 days prior to the date of the event, and contrary to the public interest to delay publication past that date because the rule must be in place to protect persons and vessels from the hazards associated with this event on November 25, 2023.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port North Carolina (COTP) has determined that potential hazards associated with the Thanksgiving Twilight Show, scheduled for 4 through 6 p.m. on

November 25, 2023, is a safety concern for mariners during the time that aircraft perform aerobatic maneuvers directly above the Neuse River. This rule is necessary to protect personnel, vessels, and the marine environment from the hazards associated with the airshow above this position of the Neuse River.

IV. Discussion of the Rule

This rule establishes a temporary safety zone on a portion of the Neuse River on November 25, 2023, from 4 to 6 p.m. The rule will be enforced for the duration of the event. The date and times of enforcement will be broadcast locally over VHF-FM marine radio. The safety zone will include all navigable waters of the Neuse River in New Bern, North Carolina inside an area starting from approximate positions: latitude 35°06'55"N., longitude 077°02'04"W., then east to latitude 35°07'06"N., longitude 077°01'27"W., then southeast to latitude 35°06'49"N., longitude 077°01'12"W., then south to latitude 35°06'08"N., longitude 077°01'18"W., then west to latitude 35°06'02"N., longitude 077°01'57"W., then north to latitude 35°06'32"N., longitude 077°01'54"W., then north to the point of origin then north to the point of origin, for a total area of approximately 1 mile square.

The airshow will consist of three separate performances and will last a total approximately 2 hours. The event will begin roughly 20 minutes before sunset and will last until approximately 30 minutes after sunset. All aircraft will remain at least 500 feet above the ground. Public spectators will be allowed to view the event from the waterway, however, for safety reasons, the aircraft will not perform if there are any vessels inside the safety zone. The duration of this safety zone is intended to protect participants and spectators on the navigable waters of the Neuse River during the airshow. Vessels may transit the area, so long as they remain outside the safety zone. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP North Carolina or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the safety zone. Vessel traffic will not be allowed to enter or transit a portion of the Neuse River during the airshow from 4 through 6 p.m. November 25, 2023. The Coast Guard will transmit a Broadcast Notice to Mariners via VHF-FM marine channel 16 regarding the enforcement area. This rule allows vessels to request permission to pass through the regulated area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 2 hours that will prohibit entry within a 1 square mile area of the Neuse River on November 25, 2023, from 4 to 6 p.m. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.T05-0512 to read as follows:

§ 165.T05-0512 Safety Zone; Neuse River, Airshow, New Bern, NC.

(a) *Location.* The following area is a safety zone: all navigable waters of the Neuse River in New Bern, North Carolina, inside an area starting from approximate positions: latitude 35°06'55"N., longitude 077°02'04"W., then east to latitude 35°07'06"N., longitude 077°01'27"W., then southeast to latitude 35°06'49"N., longitude 077°01'12"W., then south to latitude 35°06'08"N., longitude 077°01'18"W., then west to latitude 35°06'02"N., longitude 077°01'57"W., then north to latitude 35°06'32"N., longitude 077°01'54"W., then north to the point of origin, for a total area of approximately 1 mile square.

- (b) *Definitions.* As used in this section—

Captain of the Port (COTP) means the Commander, Sector North Carolina.

Designated representative means a Coast Guard Patrol Commander, including a

Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port North Carolina (COTP) for the enforcement of the safety zone.

(c) *Regulations.* (1) The general regulations governing safety zones in § 165.23 apply to the area described in paragraph (a) of this section.

(2) Entry into or remaining in this safety zone is prohibited unless authorized by the COTP North Carolina or the COTP North Carolina's designated representative. Unless permission to remain in the zone has been granted by the COTP North Carolina or the COTP North Carolina's designated representative, a vessel within this safety zone must immediately depart the zone when this section becomes effective.

(3) The Captain of the Port, North Carolina can be reached through the Coast Guard Sector North Carolina Command Duty Officer, Wilmington, North Carolina, at telephone number 910-343-3882.

(4) The Coast Guard and designated security vessels enforcing the safety zone can be contacted on VHF-FM marine band radio channel 13 (165.65 MHz) and channel 16 (156.8 MHz).

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This regulation will be enforced from 4 through 6 p.m. on November 25, 2023.

Timothy J. List,
Captain, U.S. Coast Guard,
Captain of the Port Sector North Carolina.